

The December 10, 2014 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of the Town Hall.

Chairman Matthew Zuker called the meeting to order at 5:32 p.m. with the following members present:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman
Craig W. Hiltz, Clerk
Mary Jane Coffey, Member
Susanne Murphy, Member (arrived at 6:05 p.m. left 6:47 p.m.)
Timothy Foley, Associate Member

Also Present:

James Johnson, Interim Town Administrator (arrived at 7:02 p.m.)
Ilana Quirk, Town Counsel
Margaret Walker, Town Engineer
John Chessia, Chessia Consulting Services, LLC (arrived at 7:20 p.m.)

Mr. Zuker declared the Board will be going into Executive Session to discuss litigation strategy known as 5th Fairway Development, LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2009-09, involving a proposed 40B Comprehensive Permit for land on Baker Street and to discuss litigation strategy regarding litigation known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2014-01; and Town of Walpole, et al. v Barberry Homes, LLC, Land Court 2014 MISC 481399-AHS and Robertson v. Barberry Homes, LLC, Norfolk Superior Court NOCV2014-000129 involving a proposed 40B Comprehensive Permit for land on Moose Hill Road. A discussion of the foregoing in open session could compromise the purpose for the executive session. He further stated the board will return to open session at the conclusion of the executive session.

A motion was made by Mr. Hiltz, seconded by Mr. Foley, to go into executive session, under G.L. c.30A, §21 (a)(3), for the purposes and reasons declared by Chairman and with the Zoning Board of Appeals to return to open session thereafter.

The vote was **5-0-0 in favor. (Mr. Zuker –Yes; Mr. DeCelle – Yes; Mr. Hiltz – Yes; Ms. Coffey – Yes; Mr. Foley – Yes)**

The Board returned to open session at 6:03 p.m.

Ms. Murphy arrived at 6:05 p.m.

5:30 p.m. – Thomas C. Taylor – Case #16-14 (Deliberation) (Zuker, DeCelle, Hiltz, Murphy, Foley)

Mr. Zuker stated that this is a unique case.

Ms. Murphy stated that the Applicant asked for the original variance. He lived in the town for 25 years and now he wants to leave. He gets the benefit of the variance and now he wants it gone.

Mr. Hiltz said that the Applicant would still need to build the road.

Ms. Murphy mentioned that the Applicant could build the road as a package deal.

Mr. Foley said if he does build the road then he feels the variance would lapse. There are a lot of acres. I see the cash out for the Town. I feel like it would benefit the Town and would generate tax revenue.

Mr. Hiltz stated that he believes that the whole point of the Zoning Board of Appeals is to try and drive something that is non-conforming to be conforming.

A motion was made by Mr. Hiltz, seconded by Mr. Foley, on behalf of the applicant, to approve an amendment to a Variance previously granted from Section 4-B (now Section 6-B) as written at the time when the original variance was applied for (granted on 06/19/86) of the Zoning Bylaws to allow the subdivision of the subject lot is said subdivision is in compliance with the subdivision control law, the Walpole Zoning Bylaw and is approved by the Walpole Planning Board.

The vote was **2-3-0** in opposition (Hiltz and Foley voting in favor; Zuker, DeCelle, Murphy voting in opposition); therefore the application for an amendment to a **Variance** previously granted from Section 4-B (now Section 6-B) is hereby **denied**.

REASONS FOR DECISION:

It is the finding of the Board that the applicant has not met the requirements for a Variance under Section 2.3 of the Zoning Bylaw in that:

- 1. Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located.*

The Board finds that the applicant has not demonstrated a need relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which the property is located.

- 2. A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner.*

The Board finds that the applicant has not shown substantial hardship, financial or otherwise. In 1986 the applicant agreed to the condition in the written decision dated June 19, 1986 that states that the lot shall be used for one single family residence only.

- 3. Desirable relief may be granted without substantial detriment to the public good*

In the decision from 1986 when the original variance was granted it stated that the Board felt that construction of a single family dwelling only on this 13.75 acre lot was in keeping with the controlled growth measures adopted by the town. The Board felt that now allowing a new sub-division would be detrimental to the public good.

4. *Desirable relief may be granted without nullifying or substantially derogating from the intent and purpose of this Bylaw.*

The Board finds that the residence is located in a Rural Residence Zoning District, and therefore, the Variance may not be granted without nullifying or derogating from the intent or purpose of this bylaw.

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5:30 p.m. - Talha S. Algur – Case #17-14 (Deliberation) (Zuker, DeCelle, Hiltz, Murphy, Foley)

The Board felt the applicant did not prove hardship with topography, soil conditions etc. They felt that the Applicant could remove some of the trees and that the Applicant did not have any information from Conservation to support his testimony.

A motion was made by Mr. Hiltz, seconded by Mr. Zuker, on behalf of the Applicant, to approve a Variance from Section 6-B of the Zoning Bylaw to allow an addition at 22.4 feet proximity to the lot border.

The vote was **0-5-0** in opposition (Zuker, DeCelle, Hiltz, Murphy and Foley voting); therefore the application for a **Variance** under Section 6-B is hereby **denied**.

REASONS FOR DECISION:

It is the finding of the Board that the applicant has not met the requirements for a Variance under Section 2.3 of the Zoning Bylaw in that:

- 1. Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located.***

The Board finds that the applicant has not demonstrated a need relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which the property is located. The applicant stated that he did not want to remove some trees because he likes them, however he could remove them and build out back.

- 2. A literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the petitioner.***

The Board finds that the applicant has not shown substantial hardship, financial or otherwise. The applicant has other options besides obtaining a variance. The applicant can extend out back. Although the applicant testified that he spoke to the Conservation Agent, he provided no information at the public hearing, nor did the Board receive comments from the Conservation Commission that there were Conservation by-laws preventing the applicant from constructing towards the back of the house.

3. *Desirable relief may be granted without substantial detriment to the public good*

The Board finds that due to the location of the house on the lot and the location of the abutting properties, the location of the addition will be detrimental to the public good.

4. *Desirable relief may be granted without nullifying or substantially derogating from the intent and purpose of this Bylaw.*

The Board finds that the residence is located in a Residence A, and therefore, the Variance may not be granted without nullifying or derogating from the intent or purpose of this bylaw.

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Gregory Lane Trustee – Case #18-14 (withdrawn without prejudice)

A motion was made by Ms. Murphy, seconded by Ms. Coffey to accept the Applicants written request that the case be withdrawn, without prejudice.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

Kenneth Jones – Case #27-12 (Extension)

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to accept the extension of the Special Permit for an additional 6 months.

The vote was **5-0-0 in favor** (Zuker, DeCelle, Hiltz, Coffey and Murphy voting)

Ms. Murphy left the meeting at 6:47 p.m.

At 6:48 p.m. Mr. Zuker declared the Board will be going into Executive Session to discuss litigation strategy known as 5th Fairway Development, LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2009-09, involving a proposed 40B Comprehensive Permit for land on Baker Street and to discuss litigation strategy regarding litigation known as Barberry Homes LLC v. Walpole Zoning Board of Appeals, Housing Appeals Committee No. 2014-01; and Town of Walpole, et al. v Barberry Homes, LLC, Land Court 2014 MISC 481399-AHS and Robertson v. Barberry Homes, LLC, Norfolk Superior Court NOCV2014-000129 involving a proposed 40B Comprehensive Permit for land on Moose Hill Road. A discussion of the foregoing in open session could compromise the purpose for the executive session. He further stated the board will return to open session at the conclusion of the executive session.

A motion was made by Mr. Hiltz, seconded by Mr. Foley, to go into executive session, under G.L. c.30A, §21 (a)(3), for the purposes and reasons declared by Chairman and with the Zoning Board of Appeals to return to open session thereafter.

The vote was **5-0-0 in favor. (Mr. Zuker – Yes; Mr. DeCelle – Yes; Mr. Hiltz – Yes; Ms. Coffey – Yes; Mr. Foley – Yes)**

The Board returned to open session at 7:20 p.m.

7:00 p.m. Barberry Homes, LLC – Case #21-13

Town Counsel Quirk stated with the Chair's permission the Board would like to apologize to the residents for the delay. The Zoning Board, the Town of Walpole and Barberry Homes, LLC are trying to resolve our differences. The Board wants the public to be able to talk with Barberry. The Board thought we had a settlement but we do not at this point. We will not open the Public Hearing tonight due to some differences in the proposed settlement. The parties are not far apart. The idea is that the parties will meet on January 8, 2015 at 6:00 p.m. for an Executive Session and then on January 15, 2015 at 7:00 p.m. in the Walpole Town Hall to open the Public Hearing. The Town will be re-noticing and re-advertising this case again.

Attorney Bobrowski, Representation for Barberry Homes, LLC stated that he would like to apologize to the Board and the neighbors. He stated that he is confident that at the end of the day everything will be worked out.

Minutes

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to approve the October 29, 2014 meeting minutes as written.

The vote was **4-0-0 in favor**. (DeCelle, Hiltz, Coffey and Foley voting)

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to approve the September 24, 2014 meeting minutes as written.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey and Foley voting)

A motion was made by Mr. Hiltz, seconded by Mr. DeCelle to approve the November 12, 2014 meeting minutes as written.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey and Foley voting)

A motion was made by Mr. Zuker, seconded by Mr. Foley to adjourn the meeting at 8:04 p.m.

The vote was **5-0-0 in favor**. (Zuker, DeCelle, Hiltz, Coffey and Foley voting)

Craig W. Hiltz
Clerk

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Minutes were approved on January 7, 2015.